

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHLOE COSCARELLI et al.,

Plaintiffs,

-v-

ESQUARED HOSPITALITY LLC et al.,

Defendants.
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18-CV-5943 (JMF)

ORDER

JESSE M. FURMAN, United States District Judge:

The default judgment hearing scheduled for **June 24, 2021, at 4:00 p.m.** will be held remotely by teleconference. No later than **June 24, 2021, at 9:00 a.m.**, counsel shall send a joint email to the Court with the names and telephone numbers of those who will have speaking roles at the conference, and the Court will provide call-in information to those counsel. **Counsel for Bain Capital Double Impact Fund LP and BCIP Double Impact Associates, LP are invited to participate**, and thus should be included in counsel's joint email to the Court. All others — counsel who will not have speaking roles and members of the public — may listen to the conference by calling the Court's dedicated conference call line at (888) 363-4749 and using access code 542-1540 followed by the pound (#) key. The Court notes that it has another proceeding scheduled immediately before the hearing on the same public line, so if non-speaking counsel or members of the public call in early, they should be prepared to stand by until the other proceeding concludes (and dial back in if the line is inadvertently disconnected at the conclusion of the first proceeding). The parties are reminded to follow the procedures for teleconferences described in the Court's Emergency Individual Rules and Practices in Light of COVID-19, which are available at <https://nysd.uscourts.gov/hon-jesse-m-furman>.

At the hearing, counsel should be prepared to address:


- Whether Plaintiffs will argue that any default judgment against BC Hospitality Group LLC has preclusive effect in the related case, 21-CV-4159;
- The impact, if any, of any default judgment against BC Hospitality Group LLC on the issues with respect to which the Court reserved judgment in its Opinion and Order confirming portions of the arbitration awards, *Coscarelli v. ESquared Hosp. LLC*, No. 18-CV-5943 (JMF), 2021 WL 293163 (S.D.N.Y. Jan. 28, 2021) (ECF No. 256); and
- The current scope of the *Frow* doctrine and its relevance, if any, to Plaintiffs' motion for default judgment, *see, e.g., Int'l Controls Corp. v. Vesco*, 535 F.2d 742, 746 (2d Cir. 1976) ("We think it is most unlikely that *Frow* retains any force subsequent to the

adoption of Rule 54(b). In any event, at most, *Frow* controls in situations where the liability of one defendant necessarily depends upon the liability of the others.”); 10A Wright & Miller, Fed. Prac. & Proc. § 2690 (4th ed.) (“[T]he *Frow* principle is designed to apply only when it is necessary that the relief against the defendants be consistent. If that is not the case, then a default against one defendant may stand, even though the remaining defendants are found not liable.”).

The Clerk of Court is directed to docket this Order in both 18-CV-5943 and 21-CV-4159.

SO ORDERED.

Dated: June 23, 2021
New York, New York



JESSE M. FURMAN
United States District Judge